

VOL 2 of 3

COURT OF CRIMINAL APPEALS No. CR-02-2104

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMACIRCUIT COURT NO. CC 2002-1417CIRCUIT JUDGE HOBBSType of Conviction / Order Appealed From: INTENTIONAL MURDERSentence Imposed: LIFE WITHOUT PAROLEDefendant Indigent: ☒ YES ☐ NOAIMEE C. SMITH

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(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

NAME OF APPELLEE

(For Court of Criminal Appeals Use Only)

Part 3 of 5



1 A. To go do what we went and
2 bought.

3 Q. Y'all were going to do some
4 more cocaine?

5 A. Yeah.

6 Q. At that point had Mr. Friendly
7 done any cocaine?

8 A. No.

9 Q. Because Mr. Joyce had gotten in
10 there and started the argument?

11 A. Yes.

12 Q. So y'all are going back around
13 to the other side of the building?

14 A. Yes.

15 Q. The same place you were before?

16 A. Yes.

17 Q. What happened?

18 A. We were in front of Poncho and
19 Darryl. We were in front of them -- and
20 fuck this here. He said, I ain't worried
21 about that. So he heard him. I guess he
22 heard him. He said, fuck me. So then he
23 reach for the gun. I was like, hold up,
24 man.

25 Q. Now who was standing where when

1 y'all got to the other side of the
2 apartment this time?

3 A. Boo was like closer to the end
4 and I was on the side of Boo.

5 Q. I'm going to show you a
6 photograph and ask you if you recognize
7 that. This is going to be State's 6. Do
8 you recognize this?

9 A. Yes, sir.

10 Q. What is it?

11 A. It is a picture of where we
12 was.

13 Q. Does this photograph show the
14 area where you would have been standing?

15 A. Yes, sir.

16 Q. Where the shooting would have
17 occurred?

18 A. Yes, sir.

19 Q. Now, Mr. Stewart, you see this
20 little button right here. If you push
21 it, you see how that laser comes up.

22 A. Yeah.

23 Q. Take this pointer. Using this
24 button and that laser -- you got it. You
25 see up on the ceiling? There you go.

1 Show the jurors on State's 6 about where
2 you were standing.

3 A. About that window right there.

4 Q. Right over there at the end of
5 the building?

6 A. The one like in the middle like
7 right there where the window at. I was
8 standing right there.

9 Q. Where is the nearest porch
10 light?

11 A. The porch light going to be on
12 the side a little bit where you come
13 around over there. There is going to be
14 the porch light.

15 Q. Now who is standing closest to
16 the building?

17 A. Me and James is.

18 Q. You and James?

19 A. Yeah.

20 Q. So I'm James and you are you,
21 we are standing like this?

22 A. Right there.

23 Q. Where is the defendant?

24 A. He came around us, came
25 around --

1 Q. What do you mean? Like around
2 you?

3 A. Yeah.

4 Q. And put me where he was
5 standing on the red dot. If you are
6 standing where you were standing and Boo
7 is standing beside you, put me where
8 Poncho was.

9 A. He is like right here.

10 Q. Even closer to where --

11 A. He wasn't that close.

12 Q. About right here?

13 A. Yeah, about like that.

14 Q. How would you say -- about
15 three, four feet?

16 A. Yeah.

17 Q. This is where who was standing?

18 A. Poncho.

19 Q. That guy right over there?

20 A. Yes.

21 Q. This close?

22 A. Yes.

23 Q. Okay. Now, what happened once
24 the three of y'all were over there like
25 that?

1 A. Well, when he made the
2 statement like he called Boo -- called
3 him the F word, but he didn't. He said,
4 F me, nigger. You know what I'm saying.
5 He start fumbling with his back. I said,
6 no, there ain't going to be none of this
7 here.

8 Q. Let me stop you a minute. If
9 he was fumbling with his back, why would
10 that cause you to start going --

11 A. You know, like when people have
12 a gun in that back like that.

13 Q. He was making a move?

14 A. Yes.

15 Q. What happened then?

16 A. Like I had grabbed Poncho from
17 the side because Boo was walking around
18 like from the -- fixing to walk around.
19 Fuck it, you know what I'm saying. He is
20 like fuck that nigger then. That's when
21 he start shooting.

22 Q. Now, with the Court's
23 permission, step down for me from the
24 witness stand and demonstrate -- put me
25 where Boo was first off as he walked

1 around.

2 A. I was telling -- puts me before
3 Boo, around where he was.

4 Q. Now you stand over there where
5 Poncho was. Demonstrate for the jurors
6 how he drew the gun.

7 A. From the back like that there.
8 Fuck you, like that.

9 Q. And he shot?

10 A. Yeah, he shot.

11 Q. Okay. And which direction? If
12 you are standing over here and he shot,
13 which direction would the bullets have
14 gone?

15 A. When he first shot?

16 Q. Yes.

17 A. It would have came down right
18 there.

19 Q. No. Come show me. Come this
20 way.

21 A. We were like right here and Boo
22 came right behind here. He was facing
23 that right here.

24 Q. Okay. Thank you. Have a
25 seat. If I got that correct, Boo came

1 around this way?

2 A. Yes.

3 Q. And the shot went that way?

4 A. Yes, he shot him.

5 Q. Kind of away from the building?

6 A. Yes. Like in the opening right
7 there.

8 Q. And you were standing right
9 there?

10 A. Yes, sir.

11 Q. Within feet of the person doing
12 the shooting?

13 A. Yes, sir.

14 Q. And who was the person doing
15 the shooting?

16 A. Darryl.

17 Q. Now are you familiar with
18 another individual that was at that party
19 by the name of Darryl Foggy?

20 A. Yes, sir.

21 Q. Was he out there with y'all?

22 A. No. He was across the street.

23 Q. Across the street?

24 A. Yes.

25 Q. Did you ever see him anywhere

1 in the vicinity of where James Friendly
2 got shot?

3 A. Yes. He came afterwards.

4 Q. Afterwards?

5 A. Yeah. When everybody start
6 gathering around he came up.

7 Q. But as the shooting occurred
8 did you see this Darryl Foggy person?

9 A. No.

10 Q. Now I'm going to ask you one
11 more question about that in just a minute
12 but let's go back to the shooting. After
13 Mr. Friendly was shot --

14 A. Yeah.

15 Q. -- what happened?

16 A. Then I guess he hit him
17 somewhere in the leg or something. And
18 then Boo is like backing up, go on, go
19 on, man.

20 Q. Let me stop you right there.
21 Demonstrate for the jury again what the
22 victim was doing.

23 A. (Witness complies.)

24 Q. He was holding his hands up.

25 You saw James Friendly put his hands up

1 to the man with the gun?

2 A. Yes.

3 Q. And what did the defendant do
4 in response to that?

5 A. He shot at -- my cousin was
6 backing in in a car. In a truck, I
7 mean. He shot at them.

8 Q. Okay. Did he shoot anymore
9 times?

10 A. Yes. When he shot them, he
11 shot Boo again. I don't know where he
12 shot him at. Then Boo stumbling and he
13 fell. He was like, hold up, man, hold
14 up, and he just shot again.

15 Q. Shot him again?

16 A. Yes.

17 Q. And what did you do?

18 A. I got down and talked to Boo.

19 Q. What happened to Darryl?

20 A. He ran away.

21 Q. Do you know which direction he
22 ran?

23 A. He ran like --

24 Q. Use the picture.

25 A. Like where the -- by the

1 clothesline pole, right there.

2 Q. Back towards the tree through
3 the clothesline?

4 A. Yeah. He would have been
5 running into that picture like going that
6 way.

7 Q. All right. Now, did you see
8 the defendant again at any point that
9 night?

10 A. No, sir.

11 Q. Did you see him in the next few
12 days?

13 A. No, sir.

14 Q. You didn't see him again?

15 A. Until just now.

16 Q. Now, what happened after Boo
17 got shot?

18 A. Well, I was hollering and
19 telling the guys on the street to call
20 the paramedics. Me and him was there and
21 he was like talking to me. We were on
22 the ground. Talking to me, telling me
23 don't let him die. Another girl, Nicole,
24 whose party it was, she came out there.
25 We were trying to keep him up, keep him

1 alive, telling him don't die.

2 Q. Did he say anything while you
3 were there with him?

4 A. Yes. He was like please don't
5 let me die. I got kids, man. I got
6 kids.

7 Q. That's what he said? Now, Mr.
8 Stewart, eventually the paramedics
9 arrive; is that right?

10 A. Yes.

11 Q. And the police. And you went
12 down and gave a statement to the police?

13 A. Yes, sir.

14 Q. Now, did the detectives that
15 interviewed you ever show you any
16 photographs?

17 A. Yes.

18 Q. And did anyone ever show you
19 any photographs of Darryl Joyce?

20 A. Yes.

21 Q. And were you able to identify
22 Mr. Joyce from those photographs?

23 A. Yes, sir.

24 Q. Now, Mr. Stewart, let's go back
25 for a minute and talk about Darryl

1 A. No, sir.

2 Q. What does he go by on the
3 street?

4 A. D.

5 Q. Does anybody call him Poncho?

6 A. No.

7 Q. They just have the same first
8 name, Darryl?

9 A. Yes.

10 Q. And from where you could see,
11 he was nowhere around the incident that
12 occurred?

13 A. As far as I could see, yes,
14 sir.

15 Q. As far as you could see?

16 A. Yes, sir.

17 Q. I'm going to show you what has
18 been marked as State's 21. Take a look
19 at this for me. Do you recognize this?

20 A. Yes.

21 Q. Whose gun is it?

22 MR. HARTLEY: I think we should
23 establish it is unloaded before we wield
24 it all over the place.

25 MR. POWELL: It is, Judge.

1 A. It look like Darryl Foggy's
2 gun.

3 Q. It looks like Darryl Foggy's
4 gun?

5 A. Yes.

6 Q. How would you know what Darryl
7 Foggy's gun looks like?

8 A. Because he brung it over there
9 about like two -- I can't remember the
10 time but he brung it over like he fixing
11 to leave in the car and go with a
12 female. He didn't want to ride with it.

13 Q. Are we talking about the same
14 night of the shooting?

15 A. Yes.

16 Q. At any point did Darryl Foggy
17 give you this gun?

18 A. Give it to me?

19 Q. Yes.

20 A. No. No, sir.

21 Q. Did you ever take this gun from
22 Darryl Foggy?

23 A. No.

24 Q. How do you know he had it that
25 night?

1 A. How do I know he had it? He
2 keeps a gun.

3 Q. He keeps a gun on him?

4 A. Yeah.

5 Q. Is this the gun you saw out
6 there that shot James Friendly?

7 A. No, it wasn't.

8 Q. What did the gun you saw look
9 like?

10 A. It was black. Black with red
11 like.

12 Q. It had black in it? Did it
13 have silver like that slip has?

14 A. It had black on it.

15 Q. I'm saying, did the gun you see
16 shoot James Friendly, the gun that shot
17 Boo, did it have silver on it?

18 A. Yes. It had a little silver
19 like on the bottom part.

20 Q. At the bottom. What about this
21 part up here, was that silver?

22 A. No, not -- I didn't see.

23 Q. Now, did you ever take that gun
24 and hide it anywhere that night?

25 A. No.

1 Q. Why not?

2 A. Take it and hide it?

3 Q. Yeah.

4 A. He put it up.

5 Q. Who put it up?

6 A. Darryl Foggy.

7 Q. Did you see him do it?

8 A. Yes.

9 Q. Where did he put it up?

10 A. Up under the rug.

11 Q. Where?

12 A. If the first apartment, the
13 first room.

14 Q. Which apartment?

15 A. Across the street.

16 Q. Across the street. Who lives
17 there?

18 A. Amy Albright.

19 Q. Who is she?

20 A. She is a friend we know.

21 Q. Just a friend across the
22 street?

23 A. Yes, sir.

24 Q. And she let Foggy stash his
25 gun?

1 A. She didn't know.

2 Q. She didn't know?

3 A. No.

4 Q. Now, when all this came up in
5 the investigation, did anyone ever ask
6 you if you had seen anyone there that
7 night with a gun?

8 A. No.

9 Q. Did you ever tell the police
10 about this gun right here?

11 A. Yes.

12 Q. When did you do that?

13 A. After they ask me if Darryl
14 Foggy normally have a gun. I said, yes.
15 That's how I know where it at.

16 Q. And did you tell the police
17 where it was at?

18 A. Yes, sir.

19 Q. And based on the information
20 you gave the police, were they able to
21 locate this gun?

22 A. Yes, sir.

23 Q. Now, did you ever see Darryl
24 Foggy with any kind of black gun?

25 A. No, sir.

1 Q. That's the gun you saw him
2 with?

3 A. That's the gun.

4 Q. Did you ever see Darryl Joyce
5 with a black gun?

6 A. Until that night.

7 Q. That night?

8 A. Yeah.

9 Q. You saw him that night?

10 A. Yes.

11 Q. What did Darryl Joyce do with a
12 black gun that night?

13 A. He fired on James Friendly.

14 MR. POWELL: Nothing further,
15 Judge.

16 (Brief Recess.)

17 (At which time the jury
18 re-enters the courtroom.)

19 THE COURT: Whenever you're
20 ready.

21 MR. HARTLEY: Thank you,
22 Judge.

23 CROSS-EXAMINATION

24 BY MR. HARTLEY:

25 Q. Mr. Stewart, let me review some

1 of the testimony you have already given.
2 First of all, let's establish that you do
3 admit you have been convicted of domestic
4 violence not long ago in the city court;
5 is that right?

6 A. Yes, sir.

7 Q. And also you have served prison
8 time because of possession of cocaine?

9 A. Yes, sir.

10 Q. And I have listened to the --
11 to your testimony throughout and you seem
12 to know the lingo and the language of
13 drug culture or the drug business pretty
14 well. You must be pretty familiar with
15 using drugs?

16 A. Yes, sir.

17 Q. Are you a drug addict?

18 A. No, sir.

19 Q. You just recreationally use
20 cocaine and maybe marijuana, too?

21 A. Yes.

22 Q. And drink along with it, right?

23 A. Yes, sir.

24 Q. So on the night in question --
25 what time -- strike that. What time did

1 the birthday party start on February 1st?

2 A. Like 8:00, something like that.

3 Q. 8:00?

4 A. Yes.

5 Q. And you were there from the
6 beginning of the party?

7 A. No, sir.

8 Q. What time did you arrive?

9 A. I arrived about 9:30 or so.

10 Q. Had you been drinking before
11 you got there?

12 A. No, I just got off work.

13 Q. Where were you working?

14 A. Southeast Auto.

15 Q. Excuse me?

16 A. Southeast Auto.

17 Q. It's a little late for a
18 business to be open at 8:30 on a Friday
19 night, isn't it?

20 A. No, sir.

21 Q. But when you got there, you
22 started drinking, didn't you?

23 A. Yes, sir.

24 Q. What kind of alcohol were you
25 consuming?

1 A. Well, I like Natural Lights.

2 Q. And you had several of them
3 that night, didn't you?

4 A. I wouldn't say several.

5 Q. How many had you had when it
6 got to be about 11:00 or 11:30?

7 A. I couldn't give you a number.
8 I'd say three or more.

9 Q. Excuse me?

10 A. I said like three or four.

11 Q. Three or four. So at least
12 three, maybe a lot more, right? You
13 could drink them pretty fast, can't you?

14 A. No, I wasn't trying to dog them
15 out, no.

16 Q. Is that what you call it,
17 dogging them out?

18 A. Yeah.

19 Q. You weren't dogging them out on
20 that occasion?

21 A. Yeah.

22 Q. You were more interested in
23 getting something a little stronger than
24 that, weren't you?

25 A. Not interested, no. I ain't

1 had it on my mind what you talking about.

2 Q. Oh. You just spontaneously
3 thought about getting some powder with
4 James Friendly?

5 A. Say what now?

6 Q. You and James Friendly at some
7 point made the decision to go and
8 purchase some powder cocaine, right?

9 A. Yes, sir.

10 Q. So y'all had not -- it was just
11 a spur of the moment type thing?

12 A. Yes.

13 Q. Is it pretty easy to get it in
14 that neighborhood?

15 A. I guess.

16 Q. Well --

17 A. For me, I can get it. I got
18 it.

19 Q. You can get it. It is pretty
20 easy?

21 A. Yes.

22 Q. You are pretty familiar with
23 the drug culture, right?

24 A. Yes. I been staying in Smiley
25 Court for twenty years.

1 Q. And you deal in drugs, right?

2 A. I don't deal in drugs.

3 Q. I mean possess it and use it?

4 A. I use it.

5 Q. And y'all did buy, I think,
6 fifty dollars worth of powder cocaine?

7 A. No. We didn't have a chance
8 to. We purchased -- I purchased that but
9 we didn't get a chance to do it.

10 Q. But the purchase was for -- you
11 did acquire fifty dollars worth of it?

12 A. Yes.

13 Q. To be used if you could?

14 A. Yes. If we could, yes.

15 Q. You said you were doing
16 something called snorting cocaine two on
17 the two. I don't know what two on two
18 means. Is that some sort of unique way
19 you snort it or something?

20 A. Well, that's with both nose.

21 Q. Oh. Some on each side of your
22 nose?

23 A. Yes.

24 Q. And this is something you had
25 done that night at least a little while

1 before this event took place with James
2 Friendly, right?

3 A. You saying did I do anything
4 before that?

5 Q. How many minutes was it or what
6 period of time was it that you were
7 snorting cocaine before James Friendly
8 got shot?

9 A. I'd say the time like thirty
10 minutes.

11 Q. Okay. Tell the jury how long
12 did it take to get a rush off of a snort
13 of cocaine.

14 A. Well, I guess like two minutes,
15 something like that.

16 Q. So you are under the influence
17 of cocaine within minutes after you snort
18 it, right? In seconds, in fact, isn't
19 it?

20 A. Well, you can feel it. Like I
21 said, it depend on what kind of
22 cocaine, if it's been cut or not.

23 Q. Didn't you say this was some
24 good stuff?

25 A. It was pretty good, yes.

1 Q. You know your dope real well?

2 A. There's no signs on it but
3 it'll get me high.

4 Q. Excuse me?

5 A. There's no signs on it but it
6 sometimes gets me high.

7 Q. Now, let me ask you -- and I
8 have advised the District Attorney that I
9 wanted to find out a little bit more
10 about the statement that you gave to the
11 police on the day following the
12 incident.

13 Have you seen your statement in
14 some time? Have you ever read it?

15 A. Yes, I saw it.

16 Q. When was the last time you read
17 your statement?

18 A. The whole page?

19 Q. Any part of it or all of it or
20 whatever.

21 A. Today.

22 Q. Now you have testified this
23 afternoon. Didn't you say that you are
24 accusing Darryl Joyce of having shot Mr.
25 Friendly?

1 A. Yes.

2 Q. Didn't you say the first shot
3 that he fired was into his leg?

4 A. Yes.

5 Q. And the second shot was into
6 his body somewhere?

7 A. Yeah, somewhere.

8 Q. Is that correct?

9 A. Yes. I ain't had no -- they
10 didn't tell me where all he got shot.

11 Q. Excuse me?

12 A. No one told me where all he got
13 shot at, but I assume the first shot was
14 into his leg.

15 Q. Now isn't that very
16 inconsistent -- in fact, totally
17 inconsistent with what you told the
18 police happened when you were giving them
19 your statement that morning?

20 A. No.

21 Q. Let me show it to you then.
22 Okay? Let me make sure I get the first
23 one first. You gave a statement to the
24 Detective Haynie; is that right?

25 A. I don't know his name.

1 Q. Did you give a statement at the
2 police station?

3 A. Twice, yeah.

4 Q. Twice. And one of them at
5 about 2:14 in the morning, if that helps
6 you remember which statement was first
7 and which one was second, right?

8 A. Okay.

9 Q. I'm going to refer you to this
10 and see if you can look at the first page
11 and see if it appears to be a statement
12 -- you know, a transcript of a statement
13 that you gave to the police when they
14 were talking to you about what happened
15 out there. Do you identify yourself on
16 there?

17 A. Yes.

18 Q. The first question was state
19 your name and address. And it's Eric
20 Stewart, right?

21 A. Yes.

22 Q. Would you dispute that this is
23 your statement?

24 A. No.

25 Q. On page two of that statement,

1 you were given a narrative of what
2 happened, about what happened. This
3 portion that is about -- and, counselor,
4 I'm going to the first lengthy paragraph
5 -- one, two, fourth question down. I'm
6 going to ask you to start -- if you will
7 read -- this is supposed to be your
8 answer to their question.

9 When you say they shook hands,
10 would you read that to the jury and tell
11 me if this is what you told the police on
12 that night.

13 A. Read it out loud?

14 Q. Yes.

15 A. They shook hands the first time
16 so I went out and got a beer. I came
17 back out there. They still was arguing.
18 Then they shook hands again after -- and
19 they still was arguing. So we went -- so
20 I was trying to break them up again. And
21 when Joyce, Darryl Joyce, pulled a gun
22 out and like shot two or three times in
23 the ground. Then shot Boo. And went
24 -- and then I went and got on top of
25 him.

1 Q. Now you said today -- this
2 afternoon the first shot went into Mr.
3 Friendly. Now in that statement, you
4 said he shot two or three times into the
5 ground, didn't you?

6 A. Yes.

7 Q. That's inconsistency or a
8 different statement, isn't it?

9 A. That's the question?

10 Q. He couldn't have shot into the
11 ground and shot Mr. Friendly with the
12 same bullet, could he?

13 A. I guess not.

14 Q. So you told Detective Haynie
15 that before he shot Mr. Friendly he shot
16 several shots into the ground. That's
17 what you told him, right?

18 A. Yes.

19 Q. What it is, you were really
20 messed up on drugs and couldn't really
21 accurately report what happened, could
22 you?

23 A. Not really, no.

24 Q. Not really, you couldn't tell
25 accurately?

1 A. I said I wasn't messed up like
2 that.

3 Q. Well, let's go to the second
4 statement that you gave the police at
5 that time. Again, I will show you
6 -- this is a copy provided to me by the
7 District Attorney's office. Again, it
8 starts off -- this one was taken at 7:00
9 in the morning, right? Beginning time,
10 0700 hours.

11 A. Yes.

12 Q. Do you remember giving a
13 statement this time to Corporal E.E.
14 Howton of the police department?

15 A. Yes.

16 Q. And you were going over it
17 again, weren't you?

18 A. Yes. He was asking me
19 questions then.

20 Q. Let me go over here to page
21 eight. The first question -- the first
22 question at the top of that page. And
23 they asked you in the form of a question
24 or whatever: So they were fixing to get
25 out of there. What did you tell

1 A. Yes.

2 Q. Read it out loud one more
3 time. Since you omitted it the first
4 time, let's read it again.

5 A. He shot the truck first.

6 Q. Read the next question.

7 A. Why did he shoot the truck?

8 Q. First.

9 MR. HARTLEY: Judge --

10 A. First.

11 Q. You need to read every word of
12 it because where it says first is real
13 important. The officer asked you why did
14 he shoot the truck first. And read your
15 answer.

16 A. I didn't know he -- why. I
17 didn't know he shot the truck first
18 because Johnny was like -- Johnny was
19 standing in the front of the building
20 like fixing to get in the truck.

21 Q. Where are you reading from
22 now? Oh, fixing to get in the truck.
23 Now, did -- and the officer said yeah
24 like a question. Now read your next
25 answer.

1 A. I guess he thought, you know,
2 I'm saying Johnny was getting a gun or
3 something out of the car. I don't know.
4 He shot the truck and Boo.

5 Q. Wait, wait. Every time the
6 word first is on here you skip it.

7 A. I am saying first.

8 Q. I didn't hear it.

9 A. Oh.

10 Q. If you want the court reporter
11 to read it back. Let's start with that
12 over again and put every word in there.

13 A. I guess he thought, you know
14 what I'm saying. Johnny was going and
15 getting a gun or something. I don't
16 know. And he shot the truck first and
17 Boo was like still standing up.

18 Q. And the next question please?

19 A. Okay. Okay. So Poncho shot
20 the truck first? Yeah, shot the truck
21 first. And then shot the victim, right?
22 I answered, yeah. How many times did you
23 hear a gunshot? Answer, said it was like
24 six times, six times.

25 Q. Okay. That's sufficient for

1 now. So now you have switched your story
2 from 2:00 in the morning where he had
3 shot in the ground first. And now at
4 7:00 in the morning you have got him
5 shooting into the truck first. And you
6 said it was about four or five times,
7 didn't you, that he shot the truck first?

8 A. Yeah. I said that, yeah.

9 Q. How could a person who was such
10 a good eye witness have totally
11 inconsistent answers on a critical
12 question like that?

13 A. I don't know, sir.

14 Q. You don't know. Could it be
15 because you are not telling the truth?

16 A. You saying eye witness?

17 Q. You are the eye witness.

18 A. Oh, okay.

19 Q. How could a person who claims
20 to be an eye witness and giving this jury
21 information that they can rely on be that
22 inconsistent with your first statement to
23 the police, your second to the statement,
24 and your statement that you gave at this
25 trial this afternoon?

1 A. Well, sir, I can say this.
2 When they shot -- when he shot, I was
3 shocked but I know he shot him.

4 Q. Excuse me?

5 A. I said I know he shot him.

6 Q. Why didn't you just say I don't
7 know if the officer asked you those
8 questions instead of making up answers as
9 you went along? What you are saying is
10 that you really don't know?

11 A. I do know that he shot him.

12 Q. But you got the sequence all
13 wrong when they asked you where did he
14 shoot first, right?

15 A. Yes.

16 Q. Okay. Is that indicative of
17 the fact that you were messed up and on
18 drugs that night?

19 A. No, it is not.

20 Q. Let's move to your version of
21 what happened with Darryl Foggy's gun.
22 You didn't mention that gun in either one
23 of those statements that you gave, did
24 you?

25 A. No.

1 Q. Right. But you knew at that
2 time that Darryl Foggy had hidden a gun
3 that was at the scene that night?

4 A. I ain't know Darryl Foggy had
5 anything to do with it.

6 Q. It is that gun right there,
7 right?

8 A. Yeah. I say it looked like it,
9 yes.

10 Q. Is this the gun that the
11 detective went to Amy Albright's
12 apartment and recovered from her
13 apartment?

14 A. Yes.

15 Q. Tell the whole story on that
16 again about how it came -- why you
17 disclosed that that gun existed to the
18 police. What was the deal on that?

19 A. I was the one who told the
20 police about the gun.

21 Q. Why did you tell him about it
22 if it's not involved in this matter at
23 all?

24 A. Because he asked me did Darryl
25 have a gun. I said he always have a

1 gun. He asked me how I know, and I told
2 him what happened.

3 Q. Well, if this gun wasn't
4 involved, why would Darryl Foggy -- did
5 Darryl Foggy hide it or did you hide it?

6 A. He didn't hide it. He was
7 going somewhere with a female and he
8 didn't want to ride with it.

9 Q. But you say he didn't hide it?

10 A. He didn't hide it. Anybody
11 could have saw where the gun was.

12 Q. Excuse me?

13 A. Anybody could have saw the
14 gun. It was up under the rug. Anybody
15 would have saw that.

16 Q. So your statement is Darryl
17 Foggy had that gun at the scene, right?

18 A. I guess.

19 Q. You said he always has a gun?

20 A. Yes.

21 Q. It is his gun?

22 A. Yes.

23 Q. And it is later recovered in
24 Amy Albright's apartment, which is not
25 far away, is it?

1 A. Yes.

2 Q. How close is it?

3 A. Directly across the street from
4 that right there.

5 Q. And it was under a rug?

6 A. Yes.

7 Q. But you are saying he wasn't
8 hiding it?

9 A. No. He wasn't -- the rug isn't
10 that big.

11 Q. Just puts it under a rug
12 -- it's the normal course of business,
13 right?

14 A. Just putting it up, right.

15 Q. You and Darryl Foggy have been
16 friends for how long in your life?

17 A. It has been a good little
18 while.

19 Q. Excuse me?

20 A. It has been a couple years.

21 Q. I think you said you grew up
22 with him, didn't you?

23 A. Yes.

24 Q. Would that be like ten years or
25 fifteen years?

1 A. When we say grow up, like a
2 couple years with each other.

3 Q. I thought -- I thought you said
4 something about you had known him since
5 he was a child?

6 A. I've known him.

7 Q. Let me just ask you directly.
8 How old was he when you first got to know
9 him or how long have y'all known each
10 other?

11 A. First know him like hanging
12 with him? I knowed him a long time. I
13 started hanging with him when he moved
14 back to Smiley Court.

15 Q. And how many years ago would
16 that have been?

17 A. I'd say about six or seven.

18 Q. So your relationship with him
19 goes back a pretty good way, right?

20 A. Yes.

21 Q. Oh. Where was Bryant Thomas
22 that night? Are you familiar with Bryant
23 Thomas?

24 A. Yes.

25 Q. Was he at the party?

1 A. He was there but he left.

2 Q. Okay. Did he come back?

3 A. No, I did not see him anymore.

4 Q. You didn't see him?

5 A. No.

6 Q. Are you aware that Bryant
7 Thomas identified Darryl Foggy in a photo
8 lineup as being the person who shot James
9 Friendly that night?

10 A. Yeah, they told me.

11 Q. They told you that, didn't
12 they?

13 A. Yeah.

14 Q. And they really didn't go very
15 far with that investigation, did they?

16 A. I don't know.

17 MR. HARTLEY: Thank you. No
18 further questions.

19 REDIRECT EXAMINATION

20 BY MR. POWELL:

21 Q. They went far enough to find
22 Darryl Foggy's gun, didn't they?

23 A. Yes.

24 Q. Do you know whether or not that
25 gun was tested against the bullets they

1 dug out of James Friendly's body?

2 A. I guess it's sort of procedure
3 if they found it.

4 Q. But you are aware that
5 happened?

6 A. Yes.

7 Q. I will get to that in a
8 minute. Now, before we go any further,
9 did you ever look at any photographs of
10 the person you saw do the shooting out
11 there that night?

12 A. Yes.

13 Q. I'm going to show you State's
14 Exhibit 28 just for identification
15 purposes only. Do you recognize this?

16 A. Yes.

17 Q. What is it?

18 A. It is a lineup of a couple
19 guys.

20 Q. A couple guys. It looks like
21 there's a bunch of guys?

22 A. A bunch of guys.

23 Q. Was this ever shown to you?

24 A. Yes.

25 Q. How was it shown to you?

1 A. One of the detectives showed it
2 to me.

3 Q. Did he just hand you the book
4 or was it open to a page or what?

5 A. No. I was flipping through it.

6 Q. And you flipped through it?

7 A. Yes.

8 Q. What was the purpose of you
9 flipping through this book?

10 A. He asked me can I identify
11 Poncho.

12 Q. And did you do it?

13 A. Yes.

14 Q. I'm just going to go ahead and
15 turn to the page. Which one is Poncho?

16 A. This one right here.

17 Q. You are identifying out of the
18 -- I guess that's going to be the
19 right-hand page out of the set of nine
20 photographs the one at the top left; is
21 that right?

22 A. Yes.

23 Q. This one right here. Okay.
24 Now, again, use your laser pointer and
25 point to the picture I picked out.

1 A. (Witness complies.)

2 Q. That one there. You picked
3 that one out as the Poncho you saw do the
4 shooting?

5 A. Yes.

6 Q. Now do you know who that
7 individual is?

8 A. Yes.

9 Q. Who?

10 A. Right there.

11 Q. Darryl Joyce?

12 A. Yes.

13 Q. You are pointing to the
14 defendant?

15 A. Yes.,

16 Q. Is that individual Darryl
17 Foggy?

18 A. No.

19 Q. Thank you, Ms. Perkins. This
20 is the book. It has got four ten written
21 on it --

22 A. Yes.

23 Q. -- that the detective showed
24 you?

25 A. Yes.

1 Q. While we are identifying folks,
2 I'm going to show you State's 29. Do you
3 recognize that?

4 A. Yes.

5 Q. Who is that a photograph of?

6 A. Boo.

7 Q. Who is that a photograph of?

8 A. James Friendly.

9 Q. Does that appear to be a fair
10 and accurate representation of what he
11 looked like on the night he was killed?

12 A. Yes.

13 Q. Different clothing?

14 A. Yes.

15 MR. POWELL: We offer State's
16 29, Judge.

17 THE COURT: Admitted.

18 (State's Exhibit Number 29 was
19 admitted into evidence.)

20 Q. Going back to State's 6, the
21 photograph of the apartment complex.
22 Does that appear to be a fair and
23 accurate representation of the way the
24 buildings and everything were set up on
25 the night in question?

1 A. Yes.

2 Q. That's the way they were?

3 A. Yes, sir.

4 MR. POWELL: We offer State's
5 Exhibit 6, Judge.

6 THE COURT: Admitted.

7 (State's Exhibit Number 6 was
8 admitted into evidence.)

9 Q. Now, Mr. Stewart, when these
10 gunshots started going off, how close
11 were you to the person firing that gun?

12 A. About four feet.

13 Q. Was it possible for you to have
14 gotten shot that night?

15 A. Yes.

16 Q. Were you paying a whole lot of
17 attention as to where the bullets went
18 first?

19 A. No.

20 MR. POWELL: Nothing further,
21 Judge.

22 RECROSS-EXAMINATION

23 BY MR. HARTLEY:

24 Q. You answered every question as
25 to where they went first, didn't you?

1 A. Yes, I did answer the
2 questions.

3 Q. Let's go back to this exhibit,
4 this picture that is up here now. Mr.
5 Powell asked you if it fairly and
6 accurately depicted the scene as it was
7 on that night.

8 It really doesn't look at all
9 like that because this is a daytime
10 photograph, right?

11 A. Yeah. True.

12 Q. And in fact you and Mr.
13 Friendly had gone back here in this area
14 because y'all were kind of hiding back
15 there to use that dope, weren't you?

16 A. We weren't hiding. We were on
17 the side to respect everybody else.

18 Q. What, respect everybody else?

19 A. Respect.

20 Q. As in R-E-S-P-E-C-T?

21 A. Yes.

22 Q. Okay. So you are going to go
23 do something illegal so you slip around
24 the side of the building because out of
25 respect for other people, right?

1 A. Yes.

2 Q. It just coincidentally happens
3 to be about the darkest place you can get
4 to out there, right?

5 A. Well, it's not the darkest
6 place because if you want to get more
7 dark you go on by the trees.

8 Q. Well, I guess that's -- so it's
9 dark all out there. You said there were
10 no lights back on this side of the
11 building. The only lights were on the
12 porch is what you said earlier, right?

13 A. It was nighttime, yes.

14 Q. It was nighttime?

15 A. Yes.

16 Q. So what y'all were doing was
17 kind of hiding back there, right?

18 A. Well, you can call it hiding.
19 I'm not calling it hiding.

20 Q. It just doesn't bother you one
21 bit using dope in public, does it?

22 A. That's why we went on the side
23 to respect everybody.

24 MR. HARTLEY: No further
25 questions.

1 MR. POWELL: Nothing further,
2 Judge.

3 THE COURT: You can step down.

4 MR. POWELL: The state calls
5 Detective Mackey.

6 J. MACKEY,
7 having been first duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. POWELL:

11 Q. Would you state your name for
12 the jury?

13 A. J.K.T. Mackey.

14 Q. Detective Mackey, where are you
15 currently employed?

16 A. Montgomery Police Department.

17 Q. And how long have you been a
18 detective?

19 A. Approximately one year.

20 Q. One year. Back in February of
21 last year, how were you employed?

22 A. Montgomery Police Department
23 third shift officer.

24 Q. A third shift officer.
25 Describe for the jury what that means

1 briefly.

2 A. I work in patrol from the hours
3 of ten at night to seven in the morning.

4 Q. So basically, not to
5 oversimplify it, but you were one of the
6 black and white's in a squad car riding
7 around patrolling the city?

8 A. Yes.

9 Q. And that's different from what
10 you do now as a detective?

11 A. Yes, sir.

12 Q. Would you consider that a
13 promotion?

14 A. Yes, sir.

15 Q. Now, Detective Mackey, back at
16 the time you were a patrol officer, did
17 you have an opportunity to go over to a
18 call about 11:30 in Smiley Court on
19 February 1st of last year?

20 A. Yes, sir.

21 Q. What was the nature of that
22 call?

23 A. A subject being shot.

24 Q. Now, what did you do when you
25 got over there?

1 A. When I got there I saw the
2 subject laying down in the grass. At
3 that time, I alerted the detectives and
4 my supervisors and security.

5 Q. Do you know what time you
6 arrived at the scene?

7 A. No, sir.

8 Q. I'm going to show you what I'm
9 going to mark for identification purposes
10 only as State's 30. I want you to take a
11 look at State's 30 for me.

12 A. (Witness complies.)

13 Q. Now I'm going to ask you the
14 same question again. Do you recall what
15 time you arrived at the crime scene?

16 A. Yes, sir.

17 Q. What time was that?

18 A. 0156 hundred hours.

19 Q. 156 hours?

20 A. Yes, sir.

21 Q. So that's about 11:56?

22 A. No.

23 Q. What time?

24 A. That's 1:00 in the morning.

25 Q. Oh. Take a look at that

1 again.

2 A. (Witness complies.)

3 Q. There was a hole punch right
4 there so you might want to use something
5 else for reference.

6 A. Okay. 1345 hundred hours,
7 which is 11:45.

8 Q. Okay.

9 A. 23 -- there's supposed to be a
10 2 there.

11 Q. There was supposed to have been
12 a 2 there? Now, how do you know that?

13 A. Because based on the times that
14 the other officers arrived and I was
15 there first.

16 Q. Okay. Did other officers
17 arrive at the same time?

18 A. Yes, sir.

19 Q. And does that log show what
20 time the other officers arrived?

21 A. Yes, sir.

22 Q. So basically let me get this
23 straight. Was it like two patrol units
24 arriving at the scene at basically the
25 same time?

1 A. Basically.

2 Q. And what time was it officially
3 that y'all --

4 A. 2345 hundred hours.

5 Q. 2345?

6 A. Yes, sir.

7 Q. So in regular time, that's
8 11:45 p.m.?

9 A. Yes, sir.

10 Q. Okay. Now this document we are
11 looking at, what is this?

12 A. That's the -- the crime scene
13 log.

14 Q. And what is the purpose of
15 that?

16 A. A crime scene log is to
17 document any person that come within the
18 scene of the crime that was committed.

19 Q. And you were one of the first
20 people listed on this log?

21 A. Yes, sir.

22 Q. Now when you first got there,
23 you mentioned already you saw Mr.
24 Friendly's body or what you saw to be a
25 body. You didn't know who it was at the

1 time, right?

2 A. Yes, sir.

3 Q. You identified the body. Was
4 anybody else around the body?

5 A. Well, at the current time, it
6 was a couple of people around, but my job
7 solely was to protect the crime scene and
8 to locate witnesses.

9 Q. How did you go about first off
10 -- let's start with securing the crime
11 scene. Did you do that?

12 A. Yes, sir.

13 Q. How?

14 A. I got tape out of the trunk of
15 my car and roped off the area, the
16 immediate area of the victim that was
17 shot.

18 Q. Okay. Using State's 6 as a
19 reference, do you recognize State's 6?

20 A. Yes, sir.

21 Q. What is that?

22 A. That's the crime scene.

23 Q. That's a daytime photograph?

24 A. Yes.

25 Q. And obviously we are talking

1 about something that happened at night?

2 A. Yes.

3 Q. Does that photograph show
4 everything in the same basic location it
5 was except for the cars?

6 A. Yes, sir.

7 Q. Now what did you consider to be
8 the crime scene out there, officer?

9 A. The crime scene from the
10 building on the left --

11 Q. Let me show you this little
12 gizmo right here. If you will press this
13 button right here on the top where it
14 says laser, you can point.

15 A. Okay.

16 Q. Use that to indicate what you
17 identified to be the crime scene in this
18 case.

19 A. From the building here on the
20 left to the building all the way -- it's
21 going to be all the way to the porch
22 where the front door is, back to the
23 parking lot, and there was a red truck
24 that was sitting here. Passed the red
25 truck and back to the building.

1 Q. Okay. You considered all that
2 to be the crime scene that you secured?

3 A. Yes.

4 Q. Now once you put the crime
5 scene tape up there, what -- let's talk
6 about people first. Were there any
7 people inside that crime scene tape?

8 A. The medics and a couple other
9 officers were there trying to keep the
10 family members and the people from the
11 neighborhood out of the crime scene.

12 Q. Were there any family members
13 or people from the neighborhood inside
14 that crime scene after you got it roped
15 off?

16 A. No, sir.

17 Q. So at that point would you
18 consider that scene secured?

19 A. Yes, sir.

20 Q. What happened next?

21 A. After that, my job was totally
22 to assist the medics in what they were
23 doing while the other officers were
24 standing at the corners of the crime
25 scene to keep other individuals out and

1 to make sure the body got on to the
2 ambulance and off to the hospital in a
3 safe manner.

4 Q. Did that occur?

5 A. Yes, sir.

6 Q. Did you then -- did you ever
7 search the crime scene for any physical
8 evidence?

9 A. No, sir, I didn't.

10 Q. That wasn't your job?

11 A. No, sir.

12 Q. What was your next role in
13 assisting with this investigation?

14 A. Just to assist the detectives
15 when they came out to survey the crime
16 scene.

17 Q. I believe a minute ago you
18 mentioned something about looking for
19 witnesses?

20 A. Yes, sir.

21 Q. Were you able to identify any
22 witnesses?

23 A. One witness I was able to
24 identify, and that's the gentleman -- I
25 don't know his name. He was called

1 Rabbit.

2 Q. Okay.

3 A. He was just up.

4 Q. Did you recognize him in the
5 courtroom here today?

6 A. Yes, sir.

7 Q. The guy you passed coming in?

8 A. Yes, sir.

9 Q. You identified him as being a
10 witness?

11 A. Yes, sir.

12 Q. And after you've identified an
13 individual as a witness, what happens
14 then?

15 A. He was secured in a patrol car
16 and taken to headquarters for statements.

17 Q. What is the purpose of putting
18 the person in a patrol car?

19 A. So he doesn't get a lot of
20 conversation from other individuals to
21 taint his story of what he saw.

22 Q. And you, in fact, did that?

23 A. Yes, sir.

24 Q. Did you put him actually in
25 your patrol car?

1 A. No. He wasn't in my patrol
2 car. I think it was Officer Jones who
3 put him in a car because I was doing --
4 trying to do a lot of other things at the
5 crime scene.

6 Q. What else were you trying to do
7 at the crime scene?

8 A. Basically, it was a crowd
9 gathering from the neighborhood and it
10 was persons in the crowd who knew the guy
11 that was shot. So they were trying to
12 get to the body and actually see and
13 verify who it was.

14 Q. Were they able to do that?

15 A. No, sir.

16 Q. You wouldn't let them inside
17 that tape?

18 A. No, sir.

19 Q. Do you know which detective
20 came out to the scene and then took over
21 the actual scene investigation?

22 A. No, sir.

23 Q. You don't recall that?

24 A. Can't recall. I'm sorry.

25 Q. Did you do anything else in

1 relation to securing this crime scene or
2 collection of physical evidence or
3 identifying witnesses?

4 A. No, sir.

5 MR. POWELL: Nothing further,
6 Judge.

7 MR. HARTLEY: I don't have any
8 questions for the witness.

9 THE COURT: Okay. Step down.

10 MR. POWELL: The State calls
11 Johnny Osborne.

12 JOHNNY OSBORNE,
13 having been first duly sworn, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. POWELL:

17 Q. Would you state your name for
18 the jury?

19 A. Johnny Osborne.

20 Q. And, Mr. Osborne, where do you
21 currently live?

22 A. 1305 Devonshire Drive.

23 Q. Devonshire?

24 A. Yes.

25 Q. Do you currently have a job?

1 A. No, sir.

2 Q. Have you ever had a job before?

3 A. Yes, sir.

4 Q. What kind of stuff do you do
5 for a living?

6 A. Well, I used to work at Sylvest
7 Processing. It's a chicken plant over
8 there across from Smiley Court. Also, I
9 did build houses with Faulk Construction,
10 and I worked at McLendon Furniture at one
11 point in time.

12 Q. Now, we are here today about an
13 incident that happened over in Smiley
14 Court in February of last year. Are you
15 familiar with the area and the incident
16 I'm referring to?

17 A. Uh-huh (indicating yes).

18 Q. What happened out there that
19 night?

20 A. Well, we was -- me and my
21 brother was going to this party that my
22 cousin was having.

23 Q. Let me stop you right there.
24 Who is your brother?

25 A. Brian Osborne.

1 Q. Brian Osborne?

2 A. Yes, sir.

3 Q. Okay. And the cousin whose
4 party you were going to, who was that?

5 A. His name is Christopher
6 McQueen.

7 Q. What does he go by?

8 A. Flip.

9 Q. So you were going to your
10 cousin Flip's party over in Smiley Court?

11 A. Yes, sir.

12 Q. How did you get over there?

13 A. Well, me and my girl at that
14 point in time was renting a car from
15 Budget Rental Company, and I drove over
16 there, me and my brother.

17 Q. Tell the jurors what kind of
18 car it was.

19 A. It was a Jeep Cherokee.

20 Q. What color was it?

21 A. It was red with a black
22 bottom.

23 Q. And who was driving that car
24 when y'all went over there?

25 A. I was driving.

1 Q. Where was your brother sitting?

2 A. Passenger side.

3 Q. Was anybody else with you when
4 you went over there?

5 A. No, sir.

6 Q. Just the two of you?

7 A. Yes, sir.

8 Q. And you were going to your
9 cousin's birthday party?

10 A. Yes. We were going to the
11 party.

12 Q. Do you remember about what time
13 you got over there?

14 A. Well, she had to be at work at
15 10:30. So we left our house at 10:00
16 because she wanted to get there early.
17 So after we left the Best Suites on
18 Carmichael Road where she worked at, we
19 probably got there about 10:30, 10:35.

20 Q. You keep referring to she. Did
21 your girlfriend go with you to the party?

22 A. No, I dropped her off at work.
23 She had to be at work. She was working
24 third shift or the late shift. So I
25 dropped her -- she had to be there at

1 10:30. I dropped her off like 10:15, and
2 I got on '85, '85 south, and came to
3 Smiley Court.

4 Q. About what time did you and
5 your brother get to the party?

6 A. We arrived at about 10:30,
7 10:35.

8 Q. Now, what was going on when you
9 got over to this address over on Marlyn
10 Street?

11 A. Well, when I got to the party,
12 he -- well, when I pulled up, I noticed
13 that it was a group of guys huddled over
14 in like in between the two buildings
15 where the party was at. My brother asked
16 me to go to the store. I guess he was
17 going to get some more cigars or
18 something.

19 So I stayed at the party. I
20 got out of the truck. I walked up to the
21 party where it was going on at my
22 cousin's house.

23 Q. Let me stop you right there.
24 If you could press on this button. See
25 how that works. You can point. Hold

1 that for me.

2 When you say you got to the
3 party and you saw a group of guys huddled
4 together in between the two buildings,
5 show the jury about where that was.

6 A. It was about right here.

7 Q. Okay. Over there between those
8 two buildings?

9 A. Yes, sir.

10 Q. Now what did you do?

11 A. Well, I looked over there but I
12 didn't go over there to see what they was
13 talking about because they was like
14 around each other. So I walked on up to
15 the porch where my cousin's house was.

16 Q. How many people were in that
17 group?

18 A. As far as I could see it was
19 about four or five people.

20 Q. Four or five people?

21 A. Four or five.

22 Q. Did you recognize any of them?

23 A. The only person I recognized
24 was my cousin Eric Stewart.

25 Q. Your cousin Eric Stewart?

1 A. Yes, sir.

2 Q. You saw him over there?

3 A. Yes, sir.

4 Q. What happened next?

5 A. Well, they was arguing over --

6 I heard a lot of arguing back and forth,

7 and I went in the house where the party

8 was. Then I came back outside. When I

9 came back outside, I heard -- I don't

10 know which one was said -- well, who said

11 during the argument but I just heard

12 somebody say you're not going to fuck

13 with me. Excuse me. That's the word

14 that was said.

15 Q. You heard somebody say that?

16 A. Yes, sir.

17 Q. At that point were you standing
18 on the porch?

19 A. Yes.

20 Q. Could you see these people or
21 could you just hear them?

22 A. No, I didn't see them because

23 at nighttime by the building it's a

24 shadow of a building, and they was like

25 back up in the building -- back up in the

1 cut, so I couldn't see who said it or who
2 was talking at the time.

3 Q. So you -- at that point, once
4 you went in and came back out, you didn't
5 even know where they were standing?

6 A. I still see them standing over
7 there.

8 Q. Okay.

9 A. But they was like just huddled
10 up talking.

11 Q. Just still in between the two
12 buildings?

13 A. Yes, sir.

14 Q. What did you do next?

15 A. Well, I was waiting on my
16 brother to come back. So I went back
17 inside. Then I came -- came back outside
18 because they was like getting louder and
19 louder. So I came back inside because
20 the party wasn't doing anything really.
21 Everybody was like -- had already been
22 there and drunk up all the beer and
23 whatever. So I just came back outside
24 waiting on my brother. That's when
25 the --

1 Q. Now when you say this argument
2 that you are hearing bits and pieces of
3 getting louder and louder, can you hear
4 anything of what they are saying?

5 A. No more than about what -- it
6 was about who did this, who did that, who
7 -- it was about who was the bad -- what
8 I heard was about who was the baddest
9 gang banger, I guess.

10 Q. That's what you heard?

11 A. What I heard.

12 Q. That's what the two were
13 arguing about?

14 A. Yes, sir.

15 Q. Now what happened when you came
16 back out on the porch the second time
17 waiting on your brother?

18 A. Well, I stayed out there about
19 two minutes and then by that time he came
20 around the corner. So when he came
21 around the corner, as I was walking out
22 to the parking lot, he backed up into the
23 parking lot. When he backed up, I came
24 to the driver's side. I told him I'm
25 about to leave. So if you are going with

1 me, let's go, because they are out there
2 bickering and battering back and forth
3 with each other. So I'm about to leave.

4 Q. Now when you are getting in the
5 Jeep, show me on that picture about where
6 the Jeep pulled in.

7 A. The Jeep pulled in right where
8 this car is at.

9 Q. Right where this car was?

10 A. Yeah.

11 Q. Now, I'm going to show you what
12 has been marked as State's 5. Do you
13 recognize that picture? It isn't much of
14 a picture.

15 A. Yes. That's the vehicle I was
16 driving.

17 Q. Is that the position it was in
18 after -- where y'all left it that night?
19 This is a picture of the Jeep at the
20 scene.

21 A. I can't tell if the picture was
22 taken from the back or if that's the
23 position because he backed back into the
24 parking lot. He didn't pull up in
25 there. He backed into the parking lot.

1 Q. I think for reference purposes,
2 let's go back to State's 6. So if the
3 car was here where that Camaro is in the
4 picture, it would have been backed in
5 there?

6 A. Yes, sir.

7 Q. What did you do once he got
8 there and backed the car up?

9 A. I told him I was going to leave
10 because something was about to escalate
11 because -- they was like really at each
12 other. So I told him to get out of the
13 driver's side and let me drive because I
14 had a license to drive. So he walked
15 around the car. He walked around the
16 front and I got in the passenger -- in
17 the driver's side. As soon as I got
18 ready to drive off, I heard gunshots and
19 the windows in the car -- in the truck
20 started shattering.

21 Q. What did you do?

22 A. I just stopped and ducked.

23 Q. Did you see anything about
24 where the gunshots were coming from?

25 A. No.

1 Q. Did you see anything -- did
2 they sound like they were coming in front
3 of you, behind you or what?

4 A. It sound like it hit me in the
5 back but it most definitely came through
6 the back because the back window was shot
7 out first.

8 Q. The back window was shot out
9 first?

10 A. Yes.

11 Q. And it sounded to you like the
12 gunshots were coming from behind you?

13 A. Yes, sir.

14 Q. And what had you seen earlier
15 about what was going on behind your truck
16 or that Jeep?

17 A. I saw all of them still
18 standing up there.

19 Q. Arguing?

20 A. Yeah.

21 Q. And the one you recognized was
22 who?

23 A. The only person I recognized
24 there was my cousin, Eric.

25 Q. Okay. Now what happened after

1 these shots busted out your window of the
2 Jeep?

3 A. Well, after the shots were
4 fired, after the windows shattered, some
5 more shots were fired. About three more
6 rounds were fired. Then we got out of
7 the truck. When we got out of the truck,
8 we saw Boo laying on the ground and Eric
9 was on top of him.

10 Q. Now do you know who Boo is?

11 A. Yeah, I know Boo.

12 Q. How do you know Boo?

13 A. Me and him grewed up when we
14 were staying on Huntley Drive in
15 Ridgecrest. Me and him and my brother,
16 we grewed up together. We used to play
17 together.

18 Q. Did you see anybody else other
19 than just Rabbit and Boo?

20 A. Other than Rabbit and Boo, no,
21 because my cousin who was having the
22 party, he was passed out. So anybody
23 else, I didn't see. I didn't see them up
24 close enough to see who was there.

25 Q. Did you see anybody running or

1 anything like that?

2 A. No, I didn't see anybody
3 running. The only person I seen, it was
4 -- the other two people had to run
5 because, you know, it wasn't nobody there
6 but Rabbit and Boo, and Boo was laying on
7 the ground and Rabbit was on top of him.

8 Q. Now Boo was laying on the
9 ground and Rabbit was on top of him.
10 What happened next?

11 A. Nothing. We was like shouting
12 out call the police, call the paramedics,
13 you know. That's about it.

14 Q. Did the police and the
15 paramedics eventually show up?

16 A. About thirty-five, forty
17 minutes later, the paramedics did, but
18 the police came on.

19 Q. The police were there first?

20 A. Yeah. The police arrived
21 first.

22 Q. Now when you say the paramedics
23 are you talking about the firemen around
24 there or the ambulance?

25 A. Well, I say the paramedics.

1 They came like simultaneously. The
2 paramedics came up. Then like a few
3 minutes later the paramedics -- the
4 ambulance came up.

5 Q. Now, after the ambulance --
6 they took Boo away. Back to the hospital
7 is where they took him; is that right?

8 A. I don't know. They -- it was a
9 minute before they picked him up off the
10 ground and everything. They was like
11 trying to see if they could save him, I
12 guess, but they didn't immediately pick
13 him up and take him on.

14 Q. While he was there for that
15 time y'all were waiting on the paramedics
16 and the ambulance, was he talking, was he
17 conscious?

18 A. Well, the only thing I heard
19 him say was do something -- was help him.
20 That's all I heard him saying was help
21 me.

22 Q. Just asking for help?

23 A. Yes.

24 Q. Did you see anything else going
25 on that night once the paramedics and

1 everybody came?

2 A. No. It just that -- his
3 brother and them -- all they came on.
4 The family came on. That was about it.
5 They was like in a big rage because the
6 ambulance took so long to come. It took
7 so long to attend to him and leave, take
8 him away from the crime scene.

9 MR. POWELL: I don't think I
10 have anything further, Judge.

11 THE COURT: Wiley.

12 CROSS-EXAMINATION

13 BY MR. HARTLEY:

14 Q. Mr. Osborne, did you recognize
15 or know some other people that were out
16 there that night besides just Eric
17 Stewart?

18 A. Well, the only other people I
19 knew that was there were in the house.

20 Q. All right. Let me just name a
21 couple people and see if you can tell me
22 if they were there or not. Are you
23 familiar with Bryant Thomas?

24 A. Bryant Thomas. B.T.?

25 Q. That may be his nickname, B.T.

1 A. Yeah, I am familiar with him.

2 Q. Did you see him there that
3 night?

4 A. No.

5 Q. Could he have been there
6 earlier or later?

7 A. He could have because my cousin
8 said that it was some people there at the
9 party but they had left.

10 Q. Okay. How about Darryl Foggy,
11 do you know Darryl Foggy?

12 A. He was inside the house.

13 Q. He was outside some, too,
14 wasn't he?

15 A. When I got there, he was inside
16 the house. He only came out after all
17 the shooting.

18 Q. How about -- let me see if
19 there was anybody else. Was there
20 anybody else there that you know of that
21 saw this matter that could have been an
22 eye witness to it?

23 A. The only person that I know
24 that saw it was Eric Stewart.

25 Q. Okay. Let me go back to the

1 matter of what you could see from
2 wherever you were. You parked your
3 vehicle right here, right?

4 A. Yes, sir.

5 Q. Then your brother left in the
6 vehicle and returned not too much later,
7 I guess, right? He wasn't gone long?

8 A. He probably was gone about ten
9 minutes.

10 Q. Back then to this position?

11 A. Yes, sir.

12 Q. But you said there was
13 something going on over on this side,
14 right?

15 A. Yes, sir.

16 Q. Now you have also emphasized, I
17 think, how dark it was out there.

18 A. Yes, it was dark.

19 Q. Like there wasn't -- like
20 whatever lights on the front side of the
21 building wasn't carrying to the back?

22 A. No, sir.

23 Q. You even mentioned a shadow.

24 A. A shadow because across the
25 street from the building right there that

1 you just pointed at, it's a -- like a
2 street light. So that what made the
3 shadow of the building.

4 Q. So whatever street light you
5 were referring to was not illuminating or
6 was not lighting up the area right there?

7 A. No.

8 Q. And you couldn't see anybody
9 back there, right?

10 A. No.

11 Q. Could you tell if they were
12 back there using dope or not?

13 A. Excuse me?

14 Q. Could you tell if they were
15 back there doing a dope deal or anything?

16 A. No. I don't believe it was a
17 dope deal because they were arguing.

18 Q. Well, I mean using dope. Not
19 transacting dope, using dope.

20 A. Okay. Well, I don't know if
21 they were using or not because I didn't
22 -- when I got out of the truck, I
23 noticed them over there and, you know, it
24 wasn't my business what they was doing so
25 I just went on to the party. So I didn't

1 go over there and see what was going on.

2 Q. Do you know your cousin Eric to
3 use dope?

4 A. Yes.

5 Q. But when you looked up within a
6 matter of seconds -- let's say, there
7 were only two people there at the scene
8 at that time. Are you saying Eric
9 Stewart was still there?

10 A. At the scene when he got shot
11 or the scene when I got there?

12 Q. I'm sorry. This is all at the
13 point right after you got out of the
14 vehicle after your vehicle was hit by a
15 bullet.

16 A. Okay. When I got hit, yes.
17 There was nobody there but Eric Stewart
18 and Boo's body was laying on the ground.

19 Q. So that means that at least two
20 or three people had left because you said
21 there were four or five to start with,
22 right?

23 A. Yes.

24 Q. So there had to be other
25 persons there besides Eric and Boo.

1 There had to be at least two more, didn't
2 there?

3 A. Yes.

4 Q. Could have been three more?

5 A. Could have been.

6 Q. A greater number than that?

7 You think it could have been six?

8 A. No.

9 Q. So two or three people left
10 that scene in those few seconds, right?

11 A. Yes, sir.

12 MR. HARTLEY: Thank you. No
13 further questions.

14 REDIRECT-EXAMINATION

15 BY MR. POWELL:

16 Q. One of those other three, two
17 or three people, however many there were,
18 one of those was not Darryl Foggy, was
19 it?

20 A. When I got there, he was inside
21 the house.

22 Q. And at any point did you ever
23 see him come out of the house before the
24 shooting?

25 A. No.

1 Q. When is the next time you saw
2 him?

3 A. The next time I seen him he was
4 coming outside after I had came on the
5 porch. When my brother was coming, he
6 came outside.

7 Q. Okay.

8 A. He was still on the porch when
9 they were shooting.

10 Q. And you saw him on the porch?

11 A. Yeah, because I had looked
12 back. He asked me was I fixing to go to
13 the store. I said B.K. had already came
14 -- B.K. was my brother. That's what we
15 call him. I said he already went to the
16 store, and I was going on to the truck to
17 leave.

18 Q. And that's the last time you
19 saw Darryl Foggy?

20 A. Yes.

21 Q. He wasn't over there with all
22 the other people gathered around?

23 A. No, because when I got there he
24 was inside the house.

25 Q. Now when you went over to where

1 Boo's body was and where your cousin was,
2 where were they laying?

3 A. (Witness indicating). About
4 right there.

5 Q. Okay. About right there. And
6 was Darryl Foggy over in that area?

7 A. Well, after he had got shot,
8 everybody in the party, who was left at
9 the party, they came outside.

10 Q. Outside.

11 A. We got out of the truck and we
12 walked back up there.

13 Q. Now, what was your brother's
14 name again?

15 A. Brian.

16 Q. And they call him B.K.?

17 A. Yes, sir.

18 Q. Why do they call him that?

19 A. Because his name is Brian.

20 Well, they call him Brian Keith but they
21 just shorten it to B.K.

22 Q. Brian Keith.

23 MR. POWELL: Nothing further,
24 Judge.

25 MR. HARTLEY: Nothing further.

1 THE COURT: Thank you. You can
2 step down.

3 (Off-the-Record Discussion.)

4 MR. POWELL: The State calls
5 Detective C.J. Grandison.

6 C.J. GRANDISON,
7 having been first duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. POWELL:

11 Q. Would you state your name for
12 the jury?

13 A. Detective C.J. Grandison.

14 Q. How are you employed?

15 A. Montgomery Police Department,
16 detective division property bureau.

17 Q. Now back on February 1st of
18 2002, what were you doing with the
19 department?

20 A. I was working as a late car
21 detective.

22 Q. Now describe for the jury what
23 that means that you were a late car
24 detective?

25 A. It is actually, basically, a

1 detective working third shift hours and
2 responding to initial calls, any initial
3 calls due to work -- doing shifts at
4 night.

5 Q. Now, Detective, you mentioned
6 you were specifically with the property
7 bureau; is that right?

8 A. Yes.

9 Q. How is the detective division
10 within the Police Department, how is it
11 divided up?

12 A. Persons and property. Persons,
13 investigate crimes against persons.

14 Q. For example, like a homicide?

15 A. Yes. Or robberies.

16 Q. And property, you don't
17 normally investigate that?

18 A. No, not normally.

19 Q. How did you end up being the
20 one called out to a homicide scene?

21 A. Due to the skeleton shift, the
22 only -- it was myself, Detective Haynie
23 and our supervisor, Sergeant Howton --
24 I'm sorry. Sergeant -- I can't even
25 remember his name. He is on military

1 op.

2 Q. Martino?

3 A. No, not Martino. Hoffman. We
4 were working that night and we responded
5 to the call on Marilyn.

6 Q. Do you remember approximately
7 what time that call came in?

8 A. I don't recall. I believe it
9 was like 1:30.

10 Q. Let me show you. Before you
11 guess, let me show you a police
12 supplement written by your late car
13 partner, Detective Haynie. Take a look
14 at that.

15 A. Okay. Approximately 11:50 p.m.

16 Q. 11:50 p.m. is when y'all
17 responded to the scene?

18 A. Yes.

19 Q. Now what was going on when you
20 arrived at the scene?

21 A. When we arrived, as I recall,
22 the victim was not present there. We
23 located a vehicle that had gunshot or
24 holes in the vehicle. I believe it was
25 -- I recall as being an SUV. I had a

1 camera with me at the time. I took
2 pictures of that and we located shell
3 casings, and I collected three shell
4 casings, as I recall.

5 Q. What kind of camera did you
6 have with you?

7 A. It was a digital -- Olympic
8 digital camera.

9 Q. Was it department issue?

10 A. Yes.

11 Q. Do late car detectives
12 routinely carry those cameras with them?

13 A. Yes, sir.

14 Q. And you actually took some
15 photographs?

16 A. Yes, I did.

17 Q. I'm going to show you State's
18 1, 2, 3, 4 and 5 and ask you to look
19 through there. I'm going to ask you some
20 questions.

21 A. Okay. Yeah, these appear to be
22 the photographs that I took.

23 Q. These are the actual
24 photographs?

25 A. Yes, sir.

1 Q. And do they fairly and
2 accurately depict the scene as it was on
3 the night you snapped the pictures?

4 A. Yes, sir.

5 MR. POWELL: We offer State's 1
6 through 5, Judge.

7 MR. HARTLEY: These are just
8 pictures of the shell casings?

9 MR. POWELL: And the car and
10 the scene.

11 MR. POWELL: We offer States's
12 1 through 5, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit Numbers 1
15 through 5 admitted into evidence.)

16 Q. Now, Detective, before we go
17 any further, I want to also show you
18 State's 27 and 27-A. It is a crime scene
19 diagram prepared by Detective Howton.
20 Take a second and look at that.

21 Now, does 27 and 27-A depict
22 the scene as you remember it?

23 A. Yes.

24 Q. Now, Detective, before we go
25 off on the pictures, tell me again what

1 was going on when you first got to the
2 crime scene.

3 A. When I first got there, like I
4 said, the victim wasn't there and we
5 located some evidence. I think some
6 witnesses were located as well. We just
7 basically got information while at the
8 scene. And once everything was
9 collected, we got in route to the ER to
10 check on the victim's condition.

11 Q. All right. Now, did you locate
12 any witnesses at the scene?

13 A. I, myself, didn't get involved
14 with any witnesses. I believe Detective
15 Haynie located a witness or two.

16 Q. Now what was your primary
17 function while you were at the scene
18 itself?

19 A. Just taking the pictures and
20 collecting the evidence.

21 Q. So would it be fair to say that
22 your prime responsibility was location of
23 the physical evidence that was there
24 between those two apartment buildings?

25 A. Yes, sir.

1 Q. And what was it again that you
2 found?

3 A. Three shell casings and the
4 vehicle that was shot up.

5 Q. Anything else?

6 A. Not to my knowledge.

7 Q. Let's start off with State's
8 1. That photograph is a little hard to
9 see. What is that?

10 A. That is an apartment and --
11 well, the scene basically just taped off.

12 Q. From the yellow line there in
13 front of it?

14 A. Yes. From the yellow line,
15 other side of the yellow line.

16 Q. Crime scene tape?

17 A. Yes.

18 Q. About where were you standing
19 when that picture was taken?

20 A. On the other side of the yellow
21 line. I can't recall how far.

22 Q. I'm going to jump to State's
23 5. What is this a photograph of?

24 A. That was the vehicle that was
25 -- that had bullet holes in it.

1 Q. Do you remember, Detective,
2 where were the bullet holes?

3 A. I recall the rear window or the
4 cab window being shot. It didn't really
5 take a very good picture because of the
6 lighting.

7 Q. Use this point right here.
8 Maybe you can do a little better.

9 A. Well, I'm sure it was going to
10 be on this side if -- yeah, this area
11 right here.

12 Q. That back window was shot out?

13 A. Yes, as I recall. And I just
14 can't remember any other holes that were
15 in the vehicle.

16 Q. Now, is the darkness of these
17 photographs, is that -- is that the way
18 it looked that night or is something
19 wrong with the camera?

20 A. Nothing was wrong with the
21 camera, just the lighting. It just
22 didn't take a very good picture.

23 Q. Because the way the camera did
24 the lights out there?

25 A. Yes, sir.

1 MR. HARTLEY: Objection, Your
2 Honor. I think that calls for an opinion
3 by the officer.

4 THE COURT: I'll overrule it.

5 Q. Now, Officer, if you were
6 standing there looking at the Jeep, would
7 it look like that?

8 MR. HARTLEY: Objection, Your
9 Honor. The picture speaks for itself.
10 They offered the picture. Now he is
11 criticizing his own picture.

12 MR. POWELL: I think I'm
13 entitled, Judge.

14 THE COURT: What are you
15 asking?

16 MR. POWELL: I'm asking how it
17 looked to him while he was actually there
18 present standing there looking at the
19 Jeep.

20 MR. HARTLEY: Judge, I object.
21 I don't think that's a question for which
22 a person -- any person can say how does
23 something look through my eyes as opposed
24 to what this picture represents, Judge.
25 That's some subjective analysis or

1 something.

2 THE COURT: Overruled.

3 Q. Okay. Now, Detective, you were
4 physically there at the scene, were you
5 not?

6 A. Yes, sir.

7 Q. And you stood there in that
8 parking lot that night and looked at that
9 Jeep, did you not?

10 A. Yes, sir.

11 Q. Could you see it?

12 A. Yes, sir. I'm sure if
13 -- before I took the picture, what I saw
14 -- I thought the picture would capture
15 whatever I saw, but apparently it
16 didn't. I thought I was a close enough
17 distance but maybe I should have stood a
18 little closer.

19 Q. Now, let's just go through
20 these shell casings. Now, Detective, I'm
21 going to show you what I have just marked
22 as State's 2-A. I'm going to ask you to
23 take a look at that for me. What is on
24 State's 2-A?

25 A. This photograph shows a shell

1 casing.

2 Q. Are those the three photographs
3 of the shell casings you took?

4 A. Yes.

5 Q. What have already been admitted
6 as State's 2, 3 and 4?

7 A. Yes, sir.

8 Q. Are there any lines or anything
9 going from those photographs?

10 A. Any lines, yes.

11 Q. What do those indicate?

12 A. The distance in which they were
13 -- this is -- the circle is where
14 -- the general area where they were
15 located.

16 Q. The general area?

17 A. Yes.

18 Q. So based on those series of
19 circles narrative does this fairly and
20 accurately demonstrate the location of
21 the shell casings you took that night?

22 A. Yes, sir.

23 MR. POWELL: We offer State's
24 2-A, Your Honor.

25 THE COURT: It is admitted.

1 (State's Exhibit Number 2-A
2 admitted into evidence.)

3 Q. Detective, just -- this is the
4 crime scene diagram that I had you
5 identify a minute ago.

6 A. Yes.

7 Q. Take this pointer here and
8 identify for us the apartment complex?

9 A. This is the apartment complex,
10 and the rounds were located between this
11 apartment complex in 406 and 407.

12 Q. In between those two buildings?

13 A. Yes, sir.

14 Q. And the two big blocks indicate
15 the buildings?

16 A. Yes, sir.

17 Q. Now, do you specifically recall
18 where inside that circle you picked up
19 those shell casings?

20 A. No, sir, not -- you mean -- not
21 the exact location.

22 Q. But just the general vicinity
23 where all three of those casings came
24 from?

25 A. Yes, sir.

1 Q. I believe the casings
2 themselves are circled in the smaller
3 picture?

4 A. Yes, sir.

5 Q. Now, these are going to
6 enlargements of these photographs,
7 State's 2. Can you indicate to the jury
8 where that shell casing is in that
9 photograph?

10 A. Yes. Right here.

11 Q. That metal object?

12 A. Yes.

13 Q. And going to State's 3, an
14 enlargement of another one of those
15 photographs.

16 A. This area right here.

17 Q. That's the casing?

18 A. Yes, sir.

19 Q. And finally, State's 4. If you
20 would please indicate for the jurors
21 where that shell casing is located?

22 A. It is located --

23 Q. Do you need to look at the
24 picture up close?

25 A. Yes, sir. I can't find it.

1 Q. They are hard to see, are they
2 not?

3 A. Yes. Because of the grass.

4 Q. Okay. If you would take this
5 pen and circle on that, as best you can,
6 that casing.

7 A. Is it making a mark? Well, I
8 see where it is --

9 Q. It didn't do very good, did
10 it? Let's try that one. Okay. State's
11 4, indicate for the jurors where you
12 located that casing in that photograph.

13 A. Right here.

14 Q. Now after you located these
15 three casings -- were you able to find
16 anymore first off?

17 A. No, sir.

18 Q. Those were the only three you
19 were able to locate?

20 A. Yes, sir.

21 Q. How good did you look through
22 all that grass there?

23 A. We looked pretty good. It was
24 kind of hard to see because, like I said,
25 the lighting. We did like a grid search

1 but those were the only ones we could
2 find.

3 Q. Explain to the jury what a grid
4 search consists of.

5 A. Just basically covering one
6 section or diameter and going back and
7 forth through the whole scene.

8 Q. Did you actually pick up those
9 shell casings?

10 A. Yes, after I photographed them.

11 Q. How did you do that?

12 A. How did I pick them up?

13 Q. Yes.

14 A. I put on my gloves and picked
15 them up and put them in a brown paper
16 bag.

17 Q. And then once you had them in
18 the brown paper bag, what happens to them
19 next?

20 A. I took them to the -- back to
21 police headquarters and impound them.

22 Q. Once they are impounded at
23 police headquarters, what happens to them
24 next?

25 A. They are -- I believe they are

1 sent off to forensics. I'm not exactly
2 sure because I don't work those type
3 cases.

4 Q. Once you impounded them into
5 evidence, did you have any other contact
6 with the physical evidence in this case?

7 A. I didn't have anything else to
8 do with it after that.

9 Q. So basically your main function
10 was to search this scene for whatever
11 physical evidence was out there in that
12 cut?

13 A. Yes, sir.

14 Q. And that was basically the Jeep
15 and those three casings?

16 A. Yes, sir.

17 MR. POWELL: Nothing further,
18 Judge.

19 MR. HARTLEY: I don't have any
20 questions for this witness, Judge.

21 THE COURT: Okay. Thank you,
22 Detective.

23 MR. POWELL: Your Honor, the
24 State calls Brian Osborne.

25 THE COURT: Just for planning

1 purposes, how long are you going to be?

2 MR. POWELL: If we call Brian
3 Osborne, Judge, he is our other eye
4 witness.

5 (Off-the-Record Discussion.)

6 THE COURT: Ladies and
7 gentlemen of the jury, we have got one
8 more witness. We can put him on and be
9 out of here at 5:00 or we can just come
10 back and start in the morning. I will do
11 whatever y'all want to do. I don't want
12 to inconvenience y'all. Can y'all hang
13 with us through one more witness if we
14 take about a five minute break? Let's
15 take a five minute break. Be back here
16 at 4:20 and we will finish that one
17 witness and adjourn for the day.

18 (The jury leaves the
19 courtroom.)

20 (Brief Recess.)

21 (The following proceedings were
22 held in the presence of the jury.)

23 BRIAN OSBORNE,

24 having been first duly sworn, was
25 examined and testified as follows:

DIRECT EXAMINATION

BY MR. POWELL:

Q. Okay. Now can you tell the jury what is your name?

A. Brian Osborne.

Q. What is your middle name?

A. Brian Keith Osborne.

Q. Do some people call you B.K.?

A. Yes, sir.

Q. Because it's Brian Keith?

A. Yes, sir.

Q. Who is your brother?

A. Johnny Osborne.

Q. The fella we just saw?

A. Yes, sir.

Q. Now, where do you live?

A. 1395 Devonshire Drive.

Q. Do you still live on Devonshire with your folks?

A. Yes.

Q. Do you work or go to school or anything?

A. No, sir.

Q. Now, what were you doing back in February of last year, Mr. Osborne?

1 A. What do you mean what I was
2 doing?

3 Q. February the 1st, do you
4 remember anything that occurred over in
5 Smiley Court?

6 A. Yeah. A dude got killed.

7 Q. A dude got killed. Were you
8 over there?

9 A. Yes, sir.

10 Q. Now describe for the jurors how
11 you got over to Smiley Court where the
12 dude got killed.

13 A. Well, I was riding with my
14 brother in a red Jeep. We had to
15 -- first we had to take his wife -- his
16 girlfriend to work. Then we were headed
17 to go to my cousin's party. So when we
18 dropped her off, we headed to the party
19 to Smiley Court. By the time we got
20 there, the party was over with, you know
21 what I'm saying. But when we got there,
22 there was my cousin Eric -- him and Boo
23 was outside, you know what I'm saying.

24 So Eric and Boo came to the
25 truck and spoke to me, you know what I'm

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Part 3 of 5

DOCUMENT NAME: Joyce, Darryl Jewon

CLIENT & MATTER: 58199-001

DESCRIPTION:

County: Montgomery

CC#s: 2002-1417

Attorney: Jean Therkelsen

Circle: TRANSCRIPT CASE FILE BOTH

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CERTIFICATION

I hereby certify that the preceding imaged records and documents
are a true, accurate, and complete image of the original records or
documents as received by the Office of the Attorney General of
the State of Alabama.

This the 19th day of January, 2005.

Signed: Melissa A. Martin

Notary: Coleen F. Gibson

Coleen F. Gibson
Notary Public
Commission expires 06/11/06